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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BROCKETTI, JULIE K

ART UNIT PAPER NUMBER

3713

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/876,546

Applicant(s)

JOHNSON, BRADLEY W.

Examiner

Julie K Brockett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 51-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27, 51-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 1, 2004 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 13, 14, 16, 18-20, 51, 54, 62, 63, 65, 67, 69 and 75-77 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cole et al., U.S. Patent No. 6,612,575 B1. Cole discloses a gaming device and method for playing a

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game. A player places a wager on the primary wagering game of chance (See Cole col. 5 lines 22-24). A round of the primary wagering game is conducted with the player. The player is designated as a winner if they have a predetermined arrangement of indicia resulting from completion of the round, i.e. a winning game outcome comprising awarding at least one prize. The primary game outcome further comprises at least one bonus-qualifying event. The winner is then provided an opportunity to randomly win one of a plurality of bonus prizes (See Cole abstract; col. 3 lines 66-67; col. 4 lines 1-9; col. 6 lines 29-32; col. 9 lines 4-12). A bonus game of chance apparatus is provided and adapted to present the at least one player with a bonus game if the primary game outcome comprises the bonus qualifying event. The bonus game of chance apparatus has a randomly determined bonus game outcome. The bonus game outcome comprises awarding a player a plurality of bonus prizes. One of the prizes comprises an incrementing jackpot. In the event that the randomly chosen bonus prize is the incrementing jackpot, the incrementation of the incrementing jackpot is terminated and the jackpot is awarded to the winner (See Cole col. 9 lines 4-15) [claims 1, 51, 63, 67]. The incrementing jackpot is a progressive jackpot based on a percentage of the total amount of the wagers placed (See Cole col. 9 lines 9-12) [claims 2, 51, 54, 62, 65]. The primary wagering game may comprise a card game and wherein the step of designating the at least one player as a winner if the at least one player has a predetermined arrangement of indicia upon completion of the round utilizes

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indicia displayed on one or more cards dealt to the at least one player (See Cole col. 8 lines 39-42) [claims 13, 24]. The card game may be blackjack (See Cole col. 8 lines 39-42) [claim 14]. The game may be conducted in virtual form on a video screen using one or more decks of virtual playing cards (See Cole col. 8 lines 39-42) [claim 16]. The primary wagering game may comprises a slot machine, and wherein the step of designating the at least one player as a winner if the player has a predetermined arrangement of indicia upon completion of the round utilizes the indicia displayed on one or more reels of the slot machine as a result of the step of playing the slot machine (See Cole Fig. 1; col. 6 lines 30-32; col. 8 lines 36-38) [claims 18, 27, 75]. An electro-mechanical slot machine is used having cylindrical reels that are rotatable (See Cole Fig. 3A) [claims 19, 76]. The slot machine may also be depicted in virtual form on a video screen using a virtual slot machine having a plurality of virtual reels (See Cole Abstract) [claims 20, 77]. The bonus game of chance apparatus comprises a rotatable, segmented prize wheel (See Cole Fig. 4) [claim 69].

It is inherent to the gaming method and apparatus that a plurality of game parameters are determined and stored in the game controller consisting of odds of winning a primary wagering game of chance, odds of obtaining a bonus game qualifying event in the primary wagering game, odds of winning a plurality of bonus prizes, the plurality of bonus prizes comprising an incrementing jackpot, the odds of winning the plurality of bonus prizes including the incrementing jackpot being dependent on the odds of winning the

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primary wagering game and the odds of obtaining the bonus game qualifying event [claims 1, 51, 63] (See Cole col. 5 lines 64-67; col. 6 lines 1-5, 17-19). Cole clearly determines a starting amount for the incrementing jackpot, determines a contribution rate for the incrementing jackpot, determines an increment rate for the incrementing jackpot, wherein the odds of the primary game events, the odds of bonus game events, and the incrementing jackpot parameters are interdependent (See Cole col. 9 lines 4-37) [claims 51, 63]. In the alternative, if the odds determination steps are not inherent to Cole, they are certainly obvious under 35 U.S.C. 103(a). It would have been obvious to one of ordinary skill in the art at the time the invention was made to calculate the odds for the various game parameters of Cole. By calculating the parameters, the house can maintain a specific house percentage and implement the game in a way such it has regulatory approval, maintains a house percentage and pays back a certain percentage that interests players in playing the game. Chapter 10 of the book, The Gaming Industry: Introduction and Perspectives generally explains probability theory and odds determination in regards to games. One skilled in the art would clearly know based on the mathematics of probability theory how to calculate the odds for any game and would certainly adjust gaming parameters so that they achieve the certain gaming odds.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 12, 22, 24-27, 55 and 66 are rejected under 35 U.S.C.

103(a) as being unpatentable over Cole, U.S. Patent No. 6,612,575 B1.

Cole discloses all of the limitations mentioned above including that the prize wheel includes five fixed jackpots and one incrementing jackpot (See Cole Fig. 4; col. 9 lines 4-15) [claim 26]. Cole lacks in disclosing that the jackpot is a time-based jackpot which increments a predetermined amount at predetermined time intervals [claims 3, 55, 66]. It would have been obvious to one of ordinary skill in the art to have an incrementing jackpot be a time-based jackpot which increments a predetermined amount at predetermined time intervals. By the applicant's own admission in the background of the invention section of his specification. Incrementing based on predetermined time intervals is well known in the art. Thus it is obvious to increment in this style such that players can visually see the jackpot increase over time; thus, gaining more excitement and interest in the game. Cole further discloses the step of providing an opportunity for the winner to win one of a plurality of bonus prizes, which is randomly selected utilizing a device such as a rotatable segmented prize wheel (See Cole Fig. 4)[claims 10, 12, 25]. However, Cole lacks

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in disclosing an alternately lighting display case, a plurality of boxes and an animated character-racing device [claims 10, 12, 25]. It would have been obvious to one of ordinary skill in the art at the time the invention was made that the device to randomly select a prize could be an alternately lighting display case, a plurality of boxes or an animated character-racing device. All of these devices are well known in the art and do not show a criticality to the operation of the invention; consequently, it is up to the inventor's discretion which device to implement. All of the devices provide an entertaining way to allow a player win a prize. Cole lacks in specifically disclosing that if the player wishes to have the opportunity to play the bonus game, requiring the player to place a side wager separate and distinct from the wager on the primary game [claim 22]. Cole does disclose placing additional or side wagers for spinning a multiplier bonus reel (See Cole col. 8 lines 31-35). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to require the player to place a side wager separate and distinct from the wager on the primary wagering game in order to have the opportunity to play the bonus game; wherein the step of designating the at least one player as a winner if the at least one player has a predetermined arrangement of indicia upon completion of the round occurs only if the at least one player placed the side wager [claim 22]. By requiring a player to place a side wager for a bonus game, the casino can be separately funding the bonus game versus using funds from the primary game. It is good business practice to require payment for any

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additional gaming event. That way the game may retain a higher house percentage and can more easily fund its jackpots.

Claims 4-11, 21, 23, 52, 53, 56-61, 64, 71 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Tracy, U.S.

Patent No. 5,280,909. Cole discloses having a predetermined minimum jackpot amount but lacks in disclosing a maximum jackpot (See Cole col. 9 lines 35-37) [claims 4, 53, 64]. Tracy teaches of a gaming system with a progressive jackpot. The jackpot is incremented within a predetermined range of amounts from a minimum to a maximum jackpot (See Tracy col. 4 lines 54-60) [claims 4, 53, 56]. The Applicant also admits in the background of the invention section of the invention that it is well known to have jackpots increment to a maximum value where it remains until won by a player [claims 5, 57] and then after reaching the maximum jackpot the incrementing jackpot returns to the minimum jackpot and continues incrementing in a continuously upwardly scrolling manner until the jackpot is won by a player [claims 6, 58]. These concepts are well known throughout the art and are utilized so that a jackpot does have limits and the casino will not award a prize in which they are at a loss. Consequently, it is obvious to implement the various incrementing methods into the invention of Cole. Moreover, the various incrementing methods do not show a criticality to the invention and any similar method may be used. Cole lacks in disclosing determining a target amount for the incrementing jackpot [claim 52]. Tracy teaches of determining the target

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amount for the incrementing jackpot (See Tracy col. 4 lines 54-56) [claim 52].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to create a target jackpot amount so that the casino knows what the winning jackpot should be prior to awarding it to a player. This way the casino knows how much money they need to fund the jackpot and can award the jackpot at the most economical time. Cole also lacks in disclosing creating a range around a fixed jackpot amount [claims 7, 59]. Tracy teaches that the minimum and maximum jackpots are calculated by first calculating an amount for a fixed jackpot, then creating a range around the fixed jackpot defined by the minimum and maximum jackpots, the average of values within the range is substantially equal to the fixed jackpot (See Tracy col. 4 lines 54-67) [claim 7]. The setting of the minimum and maximum jackpots includes determining how often and by what amount the incrementing jackpot increments (See Tracy col. 4 lines 66-67) [claims 8, 60]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include calculations of the minimum and maximum jackpots as well as the increment jackpot values so that a predetermined payback percentage is satisfied. It is well known throughout the art to calculate jackpots so that a certain payback percentage is achieved. By achieving a specific payback percentage, the casino knows what the profit to be made by the game is and therefore also knows that the game will not represent a loss to the casino. It is good business practice to know the payback percentage of every gaming

machine in order to distribute the profits. Cole further discloses a plurality of players at a plurality of individual primary game devices, which are electronically linked together to a common jackpot (See Cole col. 9 lines 18-24) [claim 9]. However, Cole lacks in disclosing a common jackpot display operatively connected to the game controllers [claim 9]. Tracy teaches of slot machines and their game controllers that are electronically linked together to a common jackpot display showing the current amount of the incrementing jackpot. The incrementing jackpot on the common display is visible to the players at the individual slot machines and configured such that when a player from any of the primary gaming devices/slot machines wins the incrementing jackpot. The incrementing jackpot is stopped from incrementing at the respective slot machine when won. Consequently, when the jackpot is selected it is stopped from incrementing (See Tracy Fig. 1; col. 2 lines 33-46; col. 8 lines 6-12) [claims 9, 11, 21, 23, 61, 71, 72]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a common jackpot display in the invention of Cole. By using a common display, all of the players can see what the value of the jackpot is and whether or not it has been won, based on whether it is incrementing, and can then decide whether or not they wish to play the game. The common display is clearly visible and attracts players from other places in the casino.

Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of McCrea, U.S. Patent No. 5,911,626.

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Cole lacks in disclosing a live card game on a card table with a human dealer [claim 15]. McCrea teaches of a jackpot system for a live card game on a card table with a human dealer that uses one or more decks of conventional playing cards (See McCrea Fig. 2) [claim 15]. A plurality of individual card tables are electronically linked together to a common jackpot display showing the current amount of the incrementing jackpot. Wherein the incrementing jackpot on the common jackpot display is visible to the players at the card tables and configured such that when a player from any of the card tables wins the incrementing jackpot, the incrementing jackpot can be stopped from incrementing at the respective card table (See McCrea Fig. 1) [claim 17]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to connect multiple card tables for live play of a card game to one progressive jackpot, that way many players could compete for the same jackpot and not have to be limited to only one card table or solely video generated games. Consequently, multiple players may compete for the progressive jackpot no matter what primary game they wish to play be it video poker, or live poker, etc.

Claim 68 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cole, in view of Berry, U.S. Patent No. 4,775,151. Cole lacks in disclosing an input device to manually stop the incrementing jackpot [claim 68]. Berry teaches of a timing apparatus with an input device so that a person may manually stop the incrementing jackpot (See Berry col. 5 lines 29-33)

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[claim 68]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an input device connected to the game controller of Cole so that one could manually stop the incrementing of the incrementing jackpot after the bonus game outcome comprises the incrementing jackpot. Cole automatically electronically stops the incrementing jackpot when it is won. However, it is obvious to manually stop it as one would stop a stopwatch or timer as in Berry. It is well known throughout the art to manually stop timers, by manually stopping the timer, one could verify that the jackpot in fact has been won prior to stopping the incrementation. The manual stopping can also be a fail-safe device in case the electronic stoppage does not occur.

Claims 70, 73 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole, in view of Adams, U.S. Patent No. 5,911,418. Cole discloses a segmented prize wheel with a jackpot button wherein the jackpot button is hand-operable to cause the segmented prize wheel to spin, the segmented prize wheel may stop on one of a plurality of segments of the segmented prize wheel to indicated the bonus game outcome (See Cole Figs. 1, 4, col. 7 lines 59-66; col. 8 lines 1-9) [claim 70]. Cole lacks in disclosing a segmented prize wheel with a motor [claim 70]. Adams teaches of a bonus game of chance with a motor operatively connected to the segmented prize wheel to cause the wheel to spin (See Adams col. 3 lines 54-60) [claim 70]. It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to include a motor in the invention of Cole in order to operate a mechanical segmented wheel instead of a video wheel. Certain players do not enjoy video generated games, they prefer mechanical games. Consequently, by using a mechanical wheel, the game would appeal to the players who enjoy the mechanical games. Furthermore, mechanical wheel make it appear as if the outcome is mechanical rather than electronically generated which provides greater excitement to the players. Cole also lacks in disclosing a table card game [claim 73] or the wheel built into a gaming table [claim 74]. Adams teaches of a gaming table for playing card games as a primary game and a bonus game of chance comprising a display with a wheel built into the table (See Adams Fig. 1) [claims 73, 74]. It would have been obvious to implement Cole's invention onto a gaming table wherein the bonus wheel is built into the table. Some players do not enjoy playing the video poker machines, they would prefer to sit down at a gaming table and play a card game with humans. Consequently, by implementing Cole's invention on a live card table, more players are able to compete and play for the progressive jackpot, not just the players playing the electronic gaming machines. Therefore, more players are included and more money is won by the players and held by the casino.

Response to Amendment

It has been noted that claim 75 has been amended.

The declaration filed on October 1, 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Cole, U.S. Patent No. 6,612,575 B1 reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Cole reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). A declaration by the inventor to the effect that his invention was conceived prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131. Applicant has merely stated in the declaration "the invention disclosure describes my invention and establishes that I had conceived of the invention prior to September 1, 2000". There is no evidence of facts or dates asserted to in the declaration that this disclosure was ever disclosed to another person, i.e. sent to the patent attorney in order to prepare the application or written prior to the date of September 1, 2000.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Cole reference to either a constructive reduction to practice or an actual reduction to practice. Where

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conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. *Ex parte Hunter*. 1889 C.D. 218, 49 O.G. 733 (*Comm'r Pat.* 1889). Rather applicant must show evidence of facts establishing diligence. The evidence submitted to show diligence is merely an example of "Wheel of Madness" dated 12-12-00. Applicant states in his declaration that he or caused someone else to perform the following acts: prepared description of invention, prepared drawings related to invention, performed a patent search, reviewed patent search results, considered patentability of various aspects of the invention, met and communicated with patent counsel to discuss the invention and various features of the invention, prepared a number of draft patent applications, reviewed and revised the draft patent applications, prepared various tables for patent application. Except for the tables dated 12-12-00, there is no concrete evidence that any of these things occurred. When alleging that conception or reduction to practice occurred prior to the effective filing date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date. However, the actual dates of acts relied on to establish diligence must be provided. Applicant has submitted only one date of 12-12-00 (i.e. after the reference priority date) showing tables. No other dates for any of the other activities have been provided. Furthermore, no

evidence with respect to the other activities has been provided. There is a nine-month time span between the date of the Cole reference and the date of the filing of the Application. The acts that took place during this time span must be accounted for with dates in order to show due diligence.

The Examiner suggests submitting all relevant evidence to show conception and diligence including a new declaration alleging specific facts that may help prove conception and diligence and not just vague general statements. For example, statements or evidence to the fact that the invention disclosure was shown to another person. E-mails between client/attorney discussing the patent application, the supposed draft patent applications, edited versions of the draft applications, may be submitted with dates attached that may show due diligence.

Response to Arguments

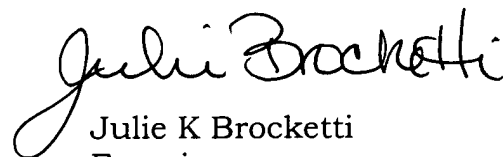
Applicant's arguments filed October 1, 2004 have been fully considered but they are not persuasive. Applicant contends that Cole is not prior art based on the Declaration under 37 C.F.R. 1.131. The Examiner notes that the Declaration was ineffective to overcome the reference date of September 1, 2000 and therefore Cole is still considered prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K Brockett whose telephone number is 571-272-4432. The examiner can normally be reached on M-Th 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julie K Brockett
Examiner
Art Unit 3713